

From: Barry Craigen
To: Microsoft ATR
Date: 12/12/01 3:52pm
Subject: Attn: Renata Hesse

In regards to Microsoft vs. USDOJ,

First, let me say that I am not an American, but rather a foreign (Canadian) consumer and computer enthusiast. I have, however, been following the case, and believe that the outcome will have ramifications which transcend international borders.

As so many others have no doubt pointed out, the decision of the court to this point has been that Microsoft has a monopoly position in the desktop operating system market, and further that they have used and continue to use illegal business practices to maintain and extend that position in the PC market.

Given the decision of the courts, the questions which need to be asked regarding fairness of the proposed settlement are as follows:

1. Does the proposed settlement adequately impose punitive damages on the guilty party?
2. Does the proposed settlement restrict the business practices of the guilty party in such a manner as to restore integrity to the marketplace?
3. Does the proposed settlement sufficiently restore a level playing field to the software market by removing control of the API's, file formats and interfaces from Microsoft?

After reading the proposed settlement, I am not convinced that it fulfills ANY of the objectives which a reasonable settlement would fulfill.

PUNITIVE DAMAGES:

There is nothing in the way of punitive damages to either Microsoft Corp. or the executives who knowingly and willfully broke the law. I must ask, then, if this settlement goes through in its present form, what ever happened to the basic principle of law that criminals should not be allowed to profit from their crimes?

Microsoft and their employees should be forced to divest themselves of all shares currently held in other high tech. companies, and forbidden to collectively own more than 5% of any one company. All executives who have worked at Microsoft over the years in which the crimes were committed should be fined 25% of their net worth to be paid out in full within 12 months (and yes, jail terms for those who do not comply). And Microsoft Corp. should pay a one time fine of at least 10% of their revenues over the years in which

their crimes were committed.

The proceeds from these fines should be spent on computer equipment for schools in less fortunate areas of the world (including the poorer districts in the US) with the proviso that the computers may not ever use Microsoft software.

INTEGRITY TO THE MARKET / LEVEL PLAYING FIELD:

The proposed settlement does not, in my opinion, sufficiently accomplish this for a number of reasons.

First, we must ask who the most viable competitors to Microsoft are. The Open Source community of developers are pretty much the only serious competition Microsoft has at this point. All other "competition" seems to limit themselves by not developing for the PC platform. There are a few notable exceptions. Corel owns a very small part of the Office Suite market, but since Microsoft purchased a 50% stake in the company, they stopped development for alternative platforms, and pulled their Operating System from the market. In the browser market, there are basically two major competitors on the Windows platform -- Netscape (owned by AOL who still has their clientele using Internet Explorer over their own in house product), and Opera (a promising little company who are finding it very difficult to keep going in the face of reduced opportunity afforded by a market dominated by Microsoft).

Next, we must ask what the primary means of software distribution is. In one word, "Preload". Consumers won't actively go out and look for alternative software to that which comes preloaded on their computers at the time of purchase -- at least not in numbers sufficient to sustain competition. Thus whoever controls the preload, controls the market.

Here again, I find the proposed settlement lacking. As a consumer, what I find repugnant about the current market is that I don't have a reasonable opportunity to say NO to Microsoft product at the time of purchase. My preference is for the Linux Operating System and the wide variety of software available for it. However, if I try to purchase a computer in any store (Even in major centres), I must pay for a Windows license (even if I have no intention of keeping Windows on my computer). There is no mechanism in place to be reimbursed for that purchase. This is the result of exclusive contracting, and provides a mechanism for Microsoft to impose other unwanted product on the unwary consumer. A mechanism for compensation to consumers should be imposed, and since this was determined by the courts to be a Monopolistic practice, the provisions of the Sherman Act for triple damages should be put into play here -- furthermore, the retail price charged for Windows should be the basis for compensatory action.

Even if I have the opportunity to say NO at the time of purchase, Microsoft can still make life difficult for me, and others like me. One of their

favorite tricks has been to use their file formats, API's and Communications/Networking protocols to make themselves incompatible with everyone else on the market. The proposed settlement takes a cynical stab at solving this one, but will effectively have no impact on the market because it leaves Microsoft in charge of the whole process (including determining who may have access to the necessary information to built alternatives, under what conditions, and at what price). A much simpler solution would be to require them to publish all API's, file formats and communications/Networking protocols under the Public Domain license. Furthermore, if they are found by a panel of industry experts to be violating the intent of this section, a severe penalty should be applied with no further appeal process (Including fines for all the executive, as well as the developers who assisted them).

SUMMING UP:

It is my opinion that the proposed agreement between Microsoft and the DOJ will have little or no impact on the current state of affairs. Furthermore, it is woefully inadequate in imposing punitive damages for past actions or future violations. For these reasons it should be rejected. A solution so lacking makes a farce of the criminal justice system.